



COMMISSIONER FOR HUMAN RIGHTS

SUBMISSION
TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON
VIOLENCE AGAINST WOMEN,
ITS CAUSES AND CONSEQUENCES
BY THE COMMISSIONER FOR HUMAN RIGHTS
OF THE REPUBLIC OF POLAND

RAPE AS A GRAVE AND SYSTEMATIC
HUMAN RIGHTS VIOLATION
AND GENDER-BASED VIOLENCE AGAINST WOMEN

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INFORMATION ABOUT THE REPORTING INSTITUTION

The Commissioner for Human Rights of the Republic of Poland is a constitutional body appointed to protect and supervise the observance of human and civil rights. The Commissioner's role is performed independently of other public authorities. The powers of the Commissioner are set out in the Constitution of the Republic of Poland as well as in the Act of 15 July 1987 on the Commissioner for Human Rights. The Commissioner is appointed by Sejm (lower chamber of the Parliament) with the approval of Senate (higher chamber of the Parliament) for a 5-year term of office.

Pursuant to the Act of 3 December 2010 on the implementation of some European Union regulations regarding equal treatment¹ the Commissioner for Human Rights also acts as an independent equality body supervising the implementation of the principle of equal treatment, including counteracting discrimination on the grounds of gender. The Commissioner's main duties in this area include the reviewing individual complaints regarding violation of the principle of equal treatment. The Commissioner also performs the following additional tasks:

1. analysing, monitoring and supporting equal treatment of all persons;
2. conducting independent research on discrimination;
3. developing and issuing independent reports and issuing recommendations concerning discrimination-related issues;
4. providing Sejm and Senate (the two chambers of the Polish Parliament) with annual reports on the Commissioner's activities in the field of equal treatment, the results thereof as well as the state of observance of the principle of equal treatment.

¹ Journal of Laws of 2016, item 1219.



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QUESTIONNAIRE ON CRIMINALIZATION AND PROSECUTION OF RAPE - DEFINITION AND SCOPE OF CRIMINAL LAW PROVISIONS

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Most relevant provisions are stipulated in the chapter XXV of Criminal Code entitled “Offences against Sexual Liberty and Decency”.

Art. 197. Rape

§ 1. Anyone who, by force, illegal threat or deceit, subjects another person to sexual intercourse is liable to imprisonment for between two and 12 years.

§ 2. If the offender forces another person to submit to another sexual act, or to perform such an act in the manner specified in § 1, he or she is liable to imprisonment for between six months and eight years.

§ 3. If the offender commits rape:

- 1) in concert with another person,
- 2) against a minor under the age of 15,
- 3) against a descendent, ascendant, adopter, adoptee, brother or sister, he or she is liable to imprisonment for at least three years.

§ 4. If the offender commits rape specified in §§ 1-3, with particular cruelty, he or she is liable to the penalty of imprisonment for at least five years.

Other forms of sexual abuse, relevant for the questionnaire include also:

Art. 198. Taking advantage of vulnerability.

Anyone who takes advantage of the vulnerability of another person, or their inability to recognize the significance of the act or ability to control their conduct, as a result of a mental disability or disorder in order to subject such a person to sexual intercourse, or to force him or her submit to another sexual act or to perform such an act is liable to imprisonment for between six months and eight years.

Art. 199. Abusing a relationship of dependency.

§ 1. Anyone who, by abusing a relationship of dependency or exploiting a critical situation, coerces another person to perform sexual intercourse or to submit to



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another sexual act or to perform such an act, is liable to imprisonment for up to three years.

§ 2. If the act specified in § 1 has been committed to the detriment of a minor, the offender is liable to imprisonment from three months to five years.

§ 3. The penalty specified in § 2 applies to anyone who coerces a minor to perform sexual intercourse or to submit to another sexual act or to perform such an act, through an abuse of trust or in exchange for a financial or personal benefit, or its promise.

Art. 200. Sexual intercourse with a minor.

§ 1. Anyone who has sexual intercourse with a minor under the age of 15, or commits any other sexual act, or coerces him or her to submit to or perform such an act, is liable to imprisonment from two to 12 years.

Art. 201. Incest.

Anyone who has sexual intercourse with an ascendant, descendant, or a person being an adoptee, adopter, brother or sister is liable to imprisonment for between three months and five years.

Additional relevant provisions of Criminal Code:

Art. 10. Age.

§ 1. The provisions of this Code apply to anyone aged 17 or older who commits a prohibited act.

§ 2. The provisions of this Code may apply to minors aged 15 or older who commit a prohibited act set out in Article 134, Article 148 §§1, 2 or 3, Article 156 §§ 1 or 3, Article 163 §§ 1 or 3, Article 166, Article 173 §§ 1 or 3, Article 197 § 3 or 4, Article 223 § 2, Article 252 §§ 1 or 2 and in Article 280, if deemed appropriate given the circumstances of the case and the level of mental development of the offender, the characteristics and personal situation, and especially if previously attempts at educational or correctional measures have been ineffective.

§ 3. In the case set out in § 2, the sentence imposed may not exceed two-thirds of the statutory maximum sentence for the offence attributed to the offender; the court may also apply an extraordinary mitigation of punishment.

§ 4. If an offender commits a prohibited act after turning 17, but before turning 18 years old, the court will adopt educational, therapeutic, or correctional measures prescribed for young offenders, instead of a penalty, if it is deemed appropriate given



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the circumstances of the case and the level of mental development of the offender, the characteristics and personal situation.

2. Based on the wording of those provisions, is the provided definition of rape:

a. Gender specific, covering women only. YES/NO

No. The legal definition of rape is gender-neutral.

b. Gender neutral, covering all persons. YES/NO

Yes, the legal definition of rape covers all persons regardless of gender, please see above.

c. Based on the lack of consent of victim. YES/NO

Yes, but only in selected cases i.e. when a perpetrator uses deceit.

d. Based on the use of force or threat. YES/NO

Yes, please see above answer 1.

e. Some combination of the above. YES/NO

Yes, please see above point c.

f. Does it cover only vaginal rape? YES/NO

No, art. 197 c.c. covers also other forms of sexual abuse (please see below point g)

g. Does it cover all forms of penetration? YES/NO. If yes, please specify.

Yes. Art. 197 c.c. criminalizes subjecting another person to sexual intercourse (§1) and any other another sexual act (§2). Both jurisprudence and views of legal academics indicate that the provision will be applicable to any form of sexual activity – both heterosexual and homosexual - including vaginal, anal, oral penetration.

h. Is marital rape in this provision explicitly included? YES/NO

No, the marital rape is not mentioned explicitly in art 197 c.c.

i. Is the law silent on marital rape? YES/NO

No, art. 197 c.c. is applicable in cases of marital rape.

j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO



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Yes. The relationship status between a perpetrator and a victim is not relevant. Therefore, subjecting a spouse to sexual intercourse and/or any other sexual activity will be punishable under art. 197 c.c.

k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO

No (please see above answer j).

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No (please see above answer j).

4. What is the legal age for sexual consent?

Legal age for sexual consent in Poland is 15 years old.

Pursuant to art. 200 c.c. anyone who has sexual intercourse with a minor under the age of 15, or commits any other sexual act, or coerces him or her submit to or perform such an act, is liable to imprisonment from two to twelve years.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

There are no specific provisions concerning sexual activity between peers.

As stated above any sexual activity with a person under 15 years old constitutes a crime and is punishable under law. However, please note that provisions of criminal code are applicable to anyone aged 17 or older (art. 10 § 1 cc). If the case concerns the aggravated rape offence specified in art. 197 § 3-4 c.c. the court may decide to apply criminal provisions to persons aged 15, after giving consideration to the circumstances of the case, level of personal development of the perpetrator, his/her characteristics and personal situation, especially when if previous educational or correctional measures proved to be ineffective (art. 10 § 2 c.c.).

Cases of minors between 13 – 15 years old undertaking sexual activity result in instigating proceedings before family court under the Act on Juvenile Delinquency Proceedings (Journal of Laws of 2018, Item 969).



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6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Please see answer 1 above.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

There are no specific provisions concerning reparations in cases of sexual assault. General provisions are applicable.

Pursuant to art. 46 § 1 c.c, in case of conviction, the court may order the offender to partially or fully remedy any damage caused by the offence, or compensate for any injury. The court is obliged to award such damages or compensation, if the victim so requests. However, a criminal court cannot award a pension based on civil law provisions.

Alternatively, if ordering partial or full remedy would face significant challenges the criminal court may order a lump sum to be paid to the aggrieved party of the maximum amount of 200 000 PLN, i.e. approx. 50 000 euros (art. 46 § 2 c.c.).

If awarded damages or compensation under art. 46 § 1-2 c.c. the victim of sexual assault still can seek additional civil law damages in a separate civil proceeding (art. 46 § 3 c.c.).

AGGRAVATING AND MITIGATING CIRCUMSTANCES

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

a. Is rape by more than one perpetrator an aggravating circumstance?

Yes, please see answer 1 above (art. 197 § 3 p. 1 c.c.)

b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO

While not expressly mentioned in provisions relating to rape, such circumstances will be considered by the court under the general rules for determining the severity of punishment (art. 53 c.c.).



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c. Is rape by spouse or intimate partner an aggravating circumstance?

No. In this respect the aggravating factors are limited to sexual abuses towards a descendent, ascendant, adopter, adoptee, brother or sister (art. 197 § 3 p. 3 c.c.).

9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

No. Only general provisions apply relating to inter alia:

- motivation of the offender,
- whether the offence was committed together with a minor,
- the type and degree of any negative consequences of the offence,
- the characteristics and personal conditions of the offender, his or her lifestyle before committing the offence, and his or her conduct afterwards, and
- in particular any efforts to redress the damage or to satisfy the public sense of justice in any way, as well as the behavior of the victim.

More directives on passing a sentence are laid down in chapter VI “Principles of passing sentence and penal measures concerning passing the judgment” of the criminal code.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

Yes. The reconciliation of parties is possible at any stage of the criminal proceedings. Pursuant to art. 53 § 3 c.c. in such case, positive results of mediation between the aggrieved party and the offender, or any settlement they may have reached in the proceedings before the prosecutor or the court will be taken into account when passing the judgement.

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

a. if the perpetrator marries the victim of rape?

No.

b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim?

No.



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PROSECUTION

12. Is rape reported to the police prosecuted ex officio (public prosecution)?

Yes. Since the Criminal Code and Criminal Proceedings Code Amendment Act adopted on 13 of June 2013 (Journal of Laws Item 849) rape is prosecuted ex officio.

13. Is rape reported to the police prosecuted ex parte (private prosecution)?

No. Please see above.

14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?

Yes, a plea bargain is possible under art. 335 c.c. in all types of summary offences.

15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?

Yes, a plea bargain is possible under art. 335 c.c. in all types of summary offences.

16. Please provide information on the statute of limitations for prosecuting rape.

Polish criminal law provides that there are two types of limitation:

- limitations on the possibility of prosecution, (art. 101-102 c.c.), and
- limitations on the execution of an imposed penalty (art. 103 c.c.).

In specific cases of sexual abuse the time limit for prosecution may differ, depending on the type of crime i.e. whether the crime is a indictable offence or summary offence as well as the prescribed sanction.

- Time limit for prosecution for rape (art. 197 § 1 and § 2 c.c.) is 15 years.
- Time limit for prosecution for aggravated rape (art. 197 § 3 and § 4 c.c.) is 20 years.

Both above time limits are extended by a further 10 years, if proceedings are initiated before the lapse of the original limit (art. 102 c.c.)



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As to the limitations on the execution of an imposed penalty, the time limit will depend on the severity of imposed penalty. Pursuant to art. 103 § 3 c.c. the sentence will not be enforced, if, from the time when the judgement became final, the following number of years have passed:

- 1) 30 - for a sentence to imprisonment for more than five years, or to a more severe penalty;
- 2) 15 - for a sentence to imprisonment for up to five years;
- 3) 10 - for a sentence to any other penalty.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

Yes. Since the Criminal Code and other Acts Amendment Act adopted on 4 of April 2014 (Journal of Laws Item 538), the time limit for prosecuting all crimes against sexual freedom committed against a minor, including rape mentioned above, was significantly extended— such crimes remain punishable at least until the aggravated party reaches the age of 30.

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

There are no specific provisions, only general rules of gathering evidence apply.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO

No specific “rape shield provisions” have been adopted. Nevertheless, the court may dismiss such allegations as immaterial to the case and in strikingly flagrant instances, such conduct may lead to disciplinary proceedings being instituted.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

Yes. The provisions of Articles 185c and 185d of the Code of Criminal Procedure regulate the specific procedure of hearing of witnesses - victims of the crimes of: rape or forcing a sexual act (Article 197 of the Penal Code); taking advantage of a person’s vulnerability or mental incapacity (Article 198 of the Penal Code), and sexual abuse of a relationship of dependence



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(Article 199 of the Penal Code). Such victims are heard by the court immediately, no later than within 14 days of the application receipt date, in a session attended by an expert psychologist. A prosecutor, a defence lawyer and a legal representative of the victim may take part in the hearing. The hearing may be attended, inter alia, by an adult person indicated by the victim provided that his/her freedom to speak is not limited thereby. In the main trial, a video and audio recording of the hearing is played and the minutes of the hearing are read out. If re-hearing of the victim as a witness is required, at his/her request it may be done remotely with the use of technical equipment ensuring simultaneous transmission of image and sound, if there is a justified reason to believe that the personal presence of the defendant at the hearing could exert a restraining influence on the victim or a negative influence on his/her mental condition. At the injured party's request it should be ensured that the expert psychologist who takes part in the hearing is of the same sex as the victim, unless this hinders the course of the proceedings. Hearings using the said procedure are conducted in suitably adapted rooms in the court building or outside of it.

WAR AND/OR CONFLICT

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

Yes. Art. 7 of the Rome Statute of the International Criminal Court was implemented into Polish law by introducing new art. 118a into the C.C. The Amendment to the Criminal Code Act was passed on 20th of May 2010.

With regard to rape as a crime against humanity art. 118a § 2 p. 4 provides: “Anyone who, taking part in a mass attack or one of repeated attacks directed against a group of people with the aim to implement or support the policy of a state or an organization: commits rape or through the use of violence, unlawful threat or deceit in any other way violates a person's sexual integrity,

- is liable to imprisonment for not less than five years, or imprisonment for 25 years”.

In addition, art. 124 § 1 C.C. which sets out responsibility for war crimes expressly criminalizes coercing civilians, POWs, injured or sick combatants, shipwreck survivors, medical personnel, clergy and combatants who have surrendered to having sexual intercourse, submitting to a another sexual act or performing such act through the use of force, illegal threat or deceit. The penalty is imprisonment for not less than 3 years.



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22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

No. Pursuant to art. 105 § 1 C.C. limitations on the possibility of prosecution and limitations on the execution of an imposed penalty do not apply to crimes against peace, crimes against humanity or war crimes.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

Yes, please see above answer 22.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified?

Yes. The Rome Statute of the International Criminal Court have been ratified by the President of the Republic of Poland on 9th of October 2001 and the instrument of ratification of the Rome Statute was deposited on 12th November 2001.

DATA

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Please see files attached:

- art. 197 c.c. - instigated proceedings (data provided by Police units)
- Rape (art. 197 c.c.) - crimes confirmed, detected, % of detected (data provided by Police units)
- Final convictions art. 197 -201 c.c. - type of penalty 2014-2018 (data provided by the Ministry Justice)
- Final convictions in selected offences - average and individual punishment (data provided by the Ministry Justice)



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26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

The cases examined by the Office of the Commissioner for Human Rights revealed problems with the practical implementation of Article 185c of the Code of Criminal

Procedure (in its version that was applicable until 4 October 2019). The data collected by the Commissioner showed that in practice there were cases in which the time passing between the date on which the offence was reported by the victim and the date of his/her hearing by a court was very long (sometimes even 90 days). This was the reason for the Commissioner's letter of intervention sent to the Minister of Justice to recommend the taking of measures to improve the victims' situation by removing the identified irregularity. As a result of the letter of intervention, starting from 5 October 2019 an obligation was introduced into the Code of Criminal Procedure to conduct the injured party's hearing by a court within 14 days of the date of reporting the crime.

Complaints filed with the Commissioner for Human Rights by victims of sexual crimes raise the following objections with regard to actions of the authorities that conduct the preparatory proceedings.

- on the side of those who conduct the proceedings - not believing victims of sexual offenses, in particular as to whether they have consented to sexual contact;
- prosecutors' and judges' negative attitude of to the victim, manifested, inter alia, in the depreciation of the victim's testimony and in the lack of empathy;
- lack of preparation of law enforcement authorities (the police) to conduct proceedings in cases of suspected use of the "rape pill" by the perpetrator;
- the police disregarding the need to ensure that activities regarding the case are conducted by a person of the same sex as the victim.

A separate problem in Poland is the lack of appropriate reaction by law enforcement authorities to reports regarding sexual offences committed by priests against children.

The problem was highlighted in 2019 by a widely shown documentary movie entitled "Don't tell anyone" by Marek and Tomasz Sekielski. The Commissioner sent a letter of intervention with regard to the problem to the National Prosecutor. According to the received reply, the examination of 29 case files of preparatory proceedings demonstrated that in 14 of the cases, the decisions to discontinue the proceedings were wrong (were either taken too early, without the necessary evidence examination, or were incorrect).